

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

ESTES INNOVATIVE AND WAREHOUSING,  
A DIVISION OF EXPRESS LINES, INC.,

v.  
  
Plaintiff

HOMETEX DESIGN, INC.,

Defendant

*New Mag 01B1*

*05.10036 NG*

) CIVIL ACTION  
NO.

RECEIPT #  
AMOUNT \$ 150  
SUMMONS ISSUED YES  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK *Four*  
DATE *1/6/05*

COMPLAINT

**Parties, Jurisdiction and Venue:**

1. The plaintiff, Estes Innovative and Warehousing, a Division of Estes Express Lines, Inc. ("Estes"), is a corporation organized and existing under the laws of the State of Virginia and maintains its principal office and place of business at 3901 West Broad Street, Richmond, Virginia 23230.

2. Estes operates as an interstate motor carrier of property and at all times pertinent hereto was and is subject to the jurisdiction of the Federal Motor Carrier Safety Administration ("FMCSA"), the ICC Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 13101, *et seq.*, and the rules, regulations and orders promulgated thereunder.

3. The defendant, Hometex Design, Inc. ("Hometex"), upon information and belief, is a Massachusetts corporation having an office and principal place of business at 126 Shove Street, Fall River, Bristol County, Massachusetts 02724.

4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1337 in that this action involves the collection of interstate transportation (freight) charges for a series of shipments moving in interstate commerce pursuant to the ICCTA, 49 U.S.C. §§ 13706 and 13710, as hereinafter more fully appears.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the defendant, Hometex, has an office in this district and the interstate shipments of goods that Estes transported and that are the subject of this Complaint were shipped from Fall River, Massachusetts and billed to Hometex in this district.

**Factual Allegations:**

6. Between April 2004 and November 2004 Estes transported seven (7) shipments of freight for Hometex in interstate commerce (the "shipments"), from Hometex's facilities in Fall River, Massachusetts to Indianapolis, Indiana, pursuant to interstate bills of lading and corresponding discounted freight bills as summarized in **Exhibit A** hereto.

7. The bills of lading were marked as "prepaid," and Hometex instructed Estes to send its freight bills for the shipments to Hometex in Fall River, Massachusetts.

8. On or about the dates shown in Exhibit A, Estes sent its freight bills to Hometex, as instructed, for the freight charges due on each of the seven (7) shipments, in the total original, discounted amount of \$4,079.60.

9. The freight charges and invoices described in Paragraphs 6 and 8 above were based upon and subject to the rates, rules, classifications and tariffs maintained by Estes and made available to Hometex in accordance with the provisions of the ICCTA and the regulations of the FMCSA thereunder.

10. Item 720 of Estes' Tariff, EXLA 105-G ("Item 720"), **Exhibit B** hereto, governs Hometex's shipments and provides as follows:

All shipments upon which the lawfully applicable rates and charges are not paid in full within a thirty (30) calendar day period from date of invoice will be subject to the following late payment provisions.

1. The carrier will provide the debtor with written notification that the freight bill is past the thirty (30) day credit period.
2. The debtor of delinquent freight bills will accrue the following late payment penalty on each delinquent freight bill:

- (a) A late payment penalty fee will applied to each delinquent freight bill, as follows:

LATE PENALTY FEE ..... 2.0%

MINIMUM PENALTY FEE (prior to 7/30/01)... \$ 3.60 (per EXLA 105-F)

MINIMUM PENALTY FEE (after 7/30/01)..... \$ 3.80 (per EXLA 105-G)

- (b) The debtor will have up to fifteen (15) calendar days, from the date of notification, to present payment in full.
- (c) Non-payment after this time period, will result in the debtor forfeiting all discounts shown on each freight bill.

3. If carrier elects to proceed with legal action or place delinquent charges with an outside collection agency, a thirty percent (30%) collection fee, calculated on the gross undiscounted charges, will be applied to each delinquent invoice.
4. The debtor will be the Consignor for PREPAID shipments; the Consignee for COLLECT shipments; or a third party as defined in Item 360-50 of this tariff.

11. At all times pertinent hereto, Estes's rates, classifications, rules, practices and tariffs

were available to Hometex upon request pursuant to 49 U.S.C. § 13710 (a)(1).

12. In spite of Estes' demands for payment, Hometex failed and refused to pay Estes' discounted freight bills.

13. By correspondence dated November 22, 2004, **Exhibit C** hereto, Estes notified Hometex of the removal of any discounts, pursuant to Item 720, and again demanded payment in full of its freight bills within fifteen (15) days.

14. Hometex nonetheless failed and refused to pay Estes's discounted freight bills as set forth in Exhibit A hereto, has paid nothing to Estes, and has thereby invoked the loss-of-discount and collection fee provisions in Item 720 of Estes's tariff described in Paragraph 10 above.

15. There is now due and owing to Estes from Hometex the sum of \$11,095.70, representing the undiscounted freight charges due Estes, plus a 30% collection fee of \$3,328.71, for a total of \$14,424.41, all in accordance with Estes's interstate tariffs, plus pre- and post-judgment interest at the maximum amount allowed by law, and costs.

**COUNT I**  
**(Interstate Freight Charges)**

Estes repeats and realleges each of the allegations contained in paragraphs 1 through 15 of this Complaint as though separately set forth herein.

16. The matters complained of herein and the liability of defendant Hometex are predicated upon Estes's interstate transportation of Hometex's property pursuant to interstate bills of lading, invoices and freight bills, and the rates, rules, classifications and tariffs incorporated by those documents and maintained by Estes.

17. Estes has performed all the terms and conditions set forth in the bills of lading for the seven (7) interstate shipments described in Paragraph 6 above which it was required to perform, and there is now due Estes from Hometex, owing and unpaid, the sum of \$11,095.70 plus a 30%

collection fee of \$3,328.41, for a total of \$14,424.41, for interstate transportation (freight) charges as aforesaid.

18. Despite Estes's demands upon Hometex for payment, Hometex has failed and refused to pay Estes for these seven (7) interstate freight bills.

19. Estes is therefore entitled to and hereby demands judgment against Hometex in the sum of \$14,424.41 pursuant to Item 720 of its interstate tariff, plus interest, costs and such other relief as may be appropriate.

WHEREFORE, plaintiff Estes Innovative and Warehousing, a Division of Estes Express Lines, Inc. prays that the Court enter judgment against defendant Hometex Design, Inc. in the amount of \$14,424.41, plus pre-judgment and post-judgment interest at the maximum rate allowed by law, costs and such other relief as may be appropriate.

**COUNT II**  
**(Breach of Contract)**

Estes repeats and realleges each of the allegations contained in paragraphs 1 through 19 of this Complaint as though separately set forth herein.

20. On or about the dates listed in Exhibit A hereto, pursuant to the request of Hometex and in accordance with the terms of interstate bill of lading contracts, Estes transported and delivered seven (7) interstate shipments of freight on behalf of Hometex, as aforesaid.

21. The interstate bill of lading contracts provided that Hometex would pay Estes for its transportation services in accordance with Estes' effective rates, rules, classifications and tariffs.

22. Hometex breached the bill of lading contracts by failing and refusing to pay Estes the amounts due, despite Estes's demands and Hometex's obligation to pay them.

23. As a result of Hometex's breach of the bill of lading contracts, Estes has been damaged in the sum of \$14,424.41.

24. Estes is therefore entitled to and hereby demands judgment against Hometex in the sum of \$14,424.41, and for such other relief as may be appropriate.

WHEREFORE, plaintiff Estes Innovative and Warehousing, a Division of Estes Express Lines, Inc. prays that the Court enter judgment against defendant Hometex Design, Inc. in the amount of \$14,424.41, plus pre-judgment and post-judgment interest at the maximum rate allowed by law, costs and such other relief as may be appropriate.

**COUNT III**  
**(Quantum Meruit)**

Estes repeats and realleges each of the allegations contained in paragraphs 1 though 24 of this Complaint as though separately set forth herein.

25. Estes rendered to Hometex valuable interstate transportation services for which Hometex promised to pay the reasonable value thereof, and which it knew or should have known it would be expected to pay for.

26. The reasonable value of the interstate transportation services performed by Estes for the benefit of Hometex is \$11,095.70, none of which has been paid, and Hometex has accordingly been unjustly enriched in the amount of at least \$11,095.70.

27. Hometex has failed and refused to pay Estes the amount due, despite Estes's demands and Hometex's obligation to pay it.

28. Estes is therefore entitled to and hereby demands judgment against Hometex in the sum of \$11,095.70, plus a 30% collection fee, interest and costs for the reasonable value of the services rendered to Hometex, and for such other relief as may be appropriate.

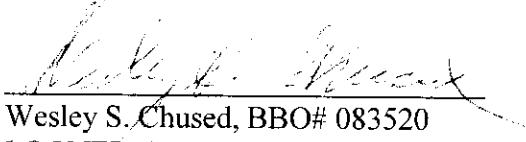
WHEREFORE, plaintiff Estes Innovative and Warehousing, a Division of Estes Express Lines, Inc. prays that the Court enter judgment against defendant Hometex Design, Inc. in the

amount of \$14,424.41, plus pre-judgment and post-judgment interest at the maximum rate allowed by law, costs and such other relief as may be appropriate.

ESTES INOVATIVE AND WAREHOUSING,  
A DIVISION OF ESTES EXPRESS LINES, INC.

By its attorney,

January 5, 2005

  
Wesley S. Chused, BBO# 083520  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, MA 02110  
Tel. (617) 951-2800  
Fax (617) 951-2819

# **EXHIBIT A**

DATE: 12/16/2004

CUSTOMER #: 5837415 CUSTOMER NAME: HOMETEX DESIGN

ESTES EXPRESS LINES

Account Detail Report for Aging Break

Adj/ BD	Pro Number	Statement Date	Billed Amount	Freight Bill Dt	Statement Number	Po#	Terms	Balance Due	Number P/D
058	0186437	6/08/04	456.97	5/18/04	00212210	NS	PPD	456.97	
058	0187697	5/26/04	271.04	4/13/04	00091562	NS	PPD	271.04	
058	0194156	6/02/04	678.78	5/26/04	00245987	NS	PPD	678.78	
058	0205245	10/08/04	332.31	10/05/04	00640513	NS	NA	332.31	
058	0217180	9/09/04	726.99	8/26/04	00549294	NS	PPD	726.99	
058	0217229	8/24/04	1013.07	8/19/04	00525692	NS	PPD	1013.07	
058	0223962	11/30/04	600.44	11/23/04	00809530	NS	PPD	600.44	
							Total Due:	4079.60	
							Total # BILLS:	7	

For Internal Use Only F 1 12162000 12162004  
 Q = PENDING

TIME: 16:15:55

PAGE: 1

Program: RAR760

# **EXHIBIT B**

## RULES—GENERAL

ITEM 710-160

ITEM 710-160

## PALLETS - RETURN OF

(Except marine type or intermodal containers designed for highway use on wheels)  
 Except as specifically provided, carriers will not perform free return of containers, pallets, platforms, racks, reels or skids.

ITEM 720

ITEM 720

## PAYMENT OF CHARGES

All shipments upon which the lawfully applicable rates and charges are not paid in full within a thirty (30) calendar day period from date of invoice will be subject to the following late payment provisions.

1. The carrier will provide the debtor with written notification that the freight bill is past the thirty (30) day credit period.
2. The debtor of delinquent freight bills will accrue the following late payment penalty on each delinquent freight bill:
  - (a). A late payment penalty fee will be applied to each delinquent freight bill, as follows:  
 LATE PENALTY FEE ..... 2.0¢  
 MINIMUM PENALTY FEE ..... \$\* 3.80
  - (b). The debtor will have up to fifteen (15) calendar days, from the date of notification, to present payment in full.
  - (c). Non-payment after this time period, will result in the debtor forfeiting all discounts shown on each freight bill.
3. If carrier elects to proceed with legal action or place delinquent charges with an outside collection agency, a thirty percent (30%) collection fee, calculated on the gross undiscounted charges, will be applied to each delinquent invoice.
4. The debtor will be the Consignor for PREPAID shipments; the Consignee for COLLECT shipments; or a third party as defined in Item 360-50 of this tariff.

ITEM 720-50

ITEM 720-50

## PAYMENT OF CHARGES—VIA GITC

All shipments upon which the lawfully applicable rates and charges are not paid in full within a thirty (30) calendar day period from date of invoice will be subject to the following late payment provisions.

1. If the carrier retains an outside collection agency and/or must litigate the matter in a court of law to effect collection, the freight charges to be collected will be those resulting from the application of the full (undiscounted) class (not exception) rates that are in effect at the time the shipment was tendered to the carrier.
2. Such freight charges shall be based on the carrier's generally applicable class rates and shall remove the application of discounts, percentage expressions, class exceptions, freight-all-kinds applications, commodity rates, non-standard rate scales, mileage rates, per vehicle rates, accessorial waivers and reductions, and any other type of reduction in the price charged to the customer. Shipments already rated at full undiscounted rates shall be subject to an additional charge equal to 30% of the total charges.

ITEM 740

ITEM 740

## PERMITS—SPECIAL

Any shipment which, due to size (height, width or length), shape or weight, requires special permits from the State Highway Department or Departments of States, or Cities or Municipalities in which the shipment is being transported, will be subject to the following:

1. The purchase cost of such permits, and all other expenses necessary to secure such permits, and all bridge, ferry, highway, tunnel or other public charges of like nature, which are incurred in the handling of any such shipment, which would not normally be required on shipments not requiring permits, will be paid by the carrier and collected as follows:
  - (a). All such expenses or charges shall be collected from the Shipper or party requesting the movement of the shipment, plus a service charge per vehicle, per state in which permits are procured, of ..... \$\* 75.20
  - (b). Except for the per vehicle, per state, service charge for each permit, shown in Paragraph 1(a) above, evidence of payment of all other charges provided for above, shall be furnished to Shipper or party requesting movements of the shipment upon request.
  - (c). When a shipment requires more than one vehicle, charges provided herein do not apply to vehicles which do not contain articles or commodities requiring such permits.
2. Any shipment which, due to size, shape or weight, requires a flagman or flagmen to accompany the vehicle, the rates in Paragraphs 2(a) and 2(b), below, will be charged to the Shipper or party requesting movement of the freight:
  - (a). For each flagman accompanying the vehicle in or on which the shipment is being transported, will be subject to a CHARGE PER HOUR (See NOTE A) of ..... \$\* 38.10
  - (b). For each flagman as escort in a vehicle, other than the vehicle in or on which the shipment is being transported, will be subject to a CHARGE PER HOUR (See NOTE B) per each such other vehicle with flagman of ..... \$\* 45.55

NOTE A—Time will be computed from time flagman reports for duty at point and time designated by the Shipper or party requesting movement of the shipment, until released, but not to exceed 16 hours in any one day

NOTE B—Time will be computed from time vehicle with flagman leaves carrier's terminal nearest point of origin until return to such terminal, but not to exceed 15 hours in any one day.

For Explanation of Abbreviations and Reference Marks, see Item 125.

# **EXHIBIT C**



November 22, 2004

General Office:

3901 West Broad Street  
Richmond, VA 23230-3962

Mailing Address:

P.O. Box 25612  
Richmond, VA 23260-5612

Phone: 804/353-1900

Fax: 804/353-8001

[www.estes-express.com](http://www.estes-express.com)

An ExpressLINK Carrier

Larry Blackman, Owner

Hometex Design  
126 Shove Street  
Fall River, MA 02724

Account # 5837415

This is your official notification of the EXLA Tariff Item 105-J, Item 720, which allows removal of any discount on delinquent unpaid bills over thirty (30) days old.

Your company has been contacted through various means requesting remittance however your lack of payment has forced us to advise you of our published rules and regulations for collection of delinquent freight charges. This tariff is only in effect upon notification to the debtor. You have now been notified.

Please be advised if payment in full is not received within fifteen (15) days of the date of this letter, your discount will be forfeited and your account will be turned over to our legal department for further collection efforts.

Regards,

A handwritten signature in black ink, appearing to read "Dawn B. Jenkins".  
Dawn B. Jenkins  
Supervisor  
Collections  
X 2328

\*Be advised your account has  
been placed on NO CHARGE

CC: Betty Reed, Director of Credit  
Robert Newman, AC Mgr.

Encl.

Collections fax # 804 359 3172  
E-Mail: [djenkins@estes-express.com](mailto:djenkins@estes-express.com)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Estes Innovative and Warehousing, a Division of Express Lines, Inc.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** 88888  
**(EXCEPT IN U.S. PLAINTIFF CASES)**

**DEFENDANTS**

Hometex Design, Inc.

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** 25005

**(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Wesley S. Chused, BBO #083520  
Looney & Grossman LLP, 101 Arch Street  
Boston, MA 02110, (617) 951-2100

**ATTORNEYS (IF KNOWN)****II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from  
□ 5 another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from  
□ 7 Magistrate Judgment

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 166 Stockholders' Suits <input type="checkbox"/> 168 Other Contract <input type="checkbox"/> 169 Contact Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury – Med. Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 660 Other	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 801 HIA (1306(f)) <input type="checkbox"/> 802 Black Lung (923) <input type="checkbox"/> 803 DWWC/DWW (406(g)) <input type="checkbox"/> 804 SSDI Title XVI <input type="checkbox"/> 805 RSI (405(g))
			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 440 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 801 Agricultural Acts <input type="checkbox"/> 802 Economic Stabilization Act <input type="checkbox"/> 803 Environmental Matters <input type="checkbox"/> 804 Energy Allocation Act <input type="checkbox"/> 806 Freedom of Information Act <input type="checkbox"/> 809 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 850 Constitutionality of State Statutes <input type="checkbox"/> 860 Other Statutory Actions

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FLING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Action for interstate freight charges, 49 U.S.C. §§ 13706 and 13710.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

**DEMAND \$**

14,424

CHECK YES only if demanded in complaint:

JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S)** (See Instructions):

IF ANY JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Estes Innovative and Warehousing, a Division of Express Lines, Inc. v. Hometex Design, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES       NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES       NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES       NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES       NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES       NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION       CENTRAL DIVISION       WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION      CENTRAL DIVISION      WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Wesley S. Chused

ADDRESS Looney & Grossman LLP, 101 Arch Street, Boston, MA 02110

TELEPHONE NO. (617) 951-2800